

Assembly Bill No. 1428

CHAPTER 283

An act to add Sections 17207.7 and 24347.6 to the Revenue and Taxation Code, relating to disaster relief, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 7, 2011. Filed with
Secretary of State September 7, 2011.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1428, Chesbro. Disaster relief: tsunami.

The Personal Income Tax Law and the Corporation Tax Law provide for the carryover to specified taxable years of specified losses sustained as a result of certain disasters occurring in California in an area determined by the President of the United States to warrant specified federal assistance, or proclaimed by the Governor to be in a state of emergency.

This bill would extend these provisions to losses sustained in the County of Mendocino as a result of the tsunami that occurred in March 2011. This bill would authorize a taxpayer to make an election to claim a deduction for those losses on the tax return for the preceding year.

This bill would declare that it is to take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. Section 17207.7 is added to the Revenue and Taxation Code, to read:

17207.7. (a) An excess disaster loss, as defined in subdivision (c), shall be carried to other taxable years as provided in subdivision (b), with respect to losses sustained in the County of Mendocino as a result of the tsunami that occurred in March 2011.

(b) (1) In the case of any loss allowed under Section 165(c) of the Internal Revenue Code, relating to limitation of losses of individuals, any excess disaster loss shall be carried forward to each of the five taxable years following the taxable year for which the loss is claimed. However, if there is any excess disaster loss remaining after the five-year period, then the applicable percentage, as set forth in paragraph (1) of subdivision (b) of Section 17276.20, of that excess disaster loss shall be carried forward to each of the next 10 taxable years.

(2) The entire amount of any excess disaster loss as defined in subdivision (c) shall be carried to the earliest of the taxable years to which, by reason of subdivision (b), the loss may be carried. The portion of the loss which

shall be carried to each of the other taxable years shall be the excess, if any, of the amount of excess disaster loss over the sum of the adjusted taxable income for each of the prior taxable years to which that excess disaster loss is carried.

(c) “Excess disaster loss” means a disaster loss computed pursuant to Section 165 of the Internal Revenue Code which exceeds the adjusted taxable income of the year of loss or, if the election under Section 165(i) of the Internal Revenue Code is made, the adjusted taxable income of the year preceding the loss.

(d) This section and Section 165(i) of the Internal Revenue Code shall be applicable to any of the losses listed in subdivision (a) sustained in any county or city in this state which was proclaimed by the Governor to be in a state of disaster.

(e) Losses allowable under this section shall not be taken into account in computing a net operating loss deduction under Section 172 of the Internal Revenue Code.

(f) For purposes of this section, “adjusted taxable income” shall be defined by Section 1212(b)(2)(B) of the Internal Revenue Code.

(g) For losses described in subdivision (a), the election under Section 165(i) of the Internal Revenue Code may be made on a return or amended return filed on or before the due date of the return (determined with regard to extension) for the taxable year in which the disaster occurred.

SEC. 2. Section 24347.6 is added to the Revenue and Taxation Code, to read:

24347.6. (a) An excess disaster loss, as defined in subdivision (c), shall be carried to other taxable years as provided in subdivision (b), with respect to losses sustained in the County of Mendocino as a result of the tsunami that occurred in March 2011.

(b) (1) In the case of any loss allowed under Section 165 of the Internal Revenue Code, relating to losses, any excess disaster loss shall be carried forward to each of the five taxable years following the taxable year for which the loss is claimed. However, if there is any excess disaster loss remaining after the five-year period, then the applicable percentage, as set forth in paragraph (1) of subdivision (b) of Section 24416.20, of that excess disaster loss shall be carried forward to each of the next 10 taxable years.

(2) The entire amount of any excess disaster loss as defined in subdivision (c) shall be carried to the earliest of the taxable years to which, by reason of subdivision (b), the loss may be carried. The portion of the loss which shall be carried to each of the other taxable years shall be the excess, if any, of the amount of excess disaster loss over the sum of the net income for each of the prior taxable years to which that excess disaster loss is carried.

(c) “Excess disaster loss” means a disaster loss computed pursuant to Section 165 of the Internal Revenue Code, which exceeds the net income of the year of loss or, if the election under Section 165(i) of the Internal Revenue Code is made, the net income of the year preceding the loss.

(d) This section and Section 165(i) of the Internal Revenue Code shall be applicable to any of the losses listed in subdivision (a) sustained in any

county or city in this state which was proclaimed by the Governor to be in a state of disaster.

(e) Any corporation subject to Section 25101 or 25101.15 that has disaster losses pursuant to this section shall determine the excess disaster loss to be carried to other taxable years under the principles specified in Section 25108 relating to net operating losses.

(f) Losses allowable under this section shall not be taken into account in computing a net operating loss deduction under Section 172 of the Internal Revenue Code.

(g) For losses described in subdivision (a), the election under Section 165(i) of the Internal Revenue Code may be made on a return or amended return filed on or before the due date of the return (determined with regard to extension) for the taxable year in which the disaster occurred.

SEC. 3. The Legislature finds and declares that this act fulfills a statewide public purpose because of all of the following:

(a) On March 16, 2011, the Governor of California made a finding that conditions of extreme peril to public health and safety to persons and property exist due to the tsunami and water surge impacting the County of Mendocino and proclaimed a state of emergency to exist within that county, thus qualifying affected persons for various forms of governmental assistance and relief.

(b) This act is consistent with, and supplements, the proclaimed disaster assistance and relief by providing necessary fiscal assistance and tax relief to affected jurisdictions and persons to allow them to maintain essential basic services and repair damage to, and restore, their homes and businesses.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to timely provide essential relief to those persons and jurisdictions that have suffered damage or loss as a result of the tsunami that occurred in March 2011, in the County of Mendocino that was the subject of the Governor's proclamation of a state of emergency, it is necessary that this act take effect immediately.